

ZUBIDA BYROM, a minor, by and  
through her Mother and Next Friend,  
ERICA BYROM  
1212 Firth of Lorne Circle  
Fort Washington, Maryland 20744

and

ERICA BYROM, Individually  
1212 Firth of Lorne Circle  
Fort Washington, Maryland 20744

*Plaintiffs,*

v.

JOHNS HOPKINS BAYVIEW  
MEDICAL CENTER, INC.,

Serve on Resident Agent:

G. Daniel Shealer, Jr.  
733 North Broadway  
Suite 102  
Baltimore, Maryland 21205

*Defendant Johns Hopkins Bayview  
Medical Center, Inc.*

\* \* \* \* \*

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs, Zubida Byrom, a minor, by and through her Mother and Next Friend, Erica Byrom and Erica Byrom, Individually, and by and through their undersigned counsel, Keith D. Forman, Mary M. Koch, Jason B. Penn, Sarah L. Smith, and Wais, Vogelstein, Forman & Offutt, L.L.C. hereby sue the above-captioned Defendant, and for their causes of action state as follows:

**JURISDICTION AND VENUE**

1. This medical negligence claim is instituted pursuant to MD. CTS. & JUD. PROC. ART. §§3-2A-01-10, for the recovery of damages in excess of Thirty Thousand Dollars (\$30,000.00).

2. Venue is proper in Baltimore City, Maryland.

3. Plaintiffs aver that all conditions precedent to the filing of this lawsuit have been met, including the filing of a Statement of Claim, Certificate of Qualified Expert and Expert Report, and Waiver of Arbitration in the Health Care Alternative Dispute Resolution Office of Maryland.

4. Plaintiffs attach hereto and incorporate by reference the Certificates of Qualified Expert and Report of Michael S. Cardwell, M.D., and Corinne L. Leach, M.D., Ph.D.

### **PARTIES**

5. Plaintiff, Zubida Byrom is a minor residing with her mother, Erica Byrom at 1212 Firth of Lorne Circle, Fort Washington, Maryland 20744.

6. Plaintiff, Erica Byrom, is a resident of Prince George's County, Maryland.

7. Defendant Johns Hopkins Bayview Medical Center, Inc. is and, at all times relevant hereto, was a Maryland corporation engaged in the provision of health care services, including the provision of obstetrical care and other medical services, advice and treatment to individuals in need thereof. At all times relevant hereto, Defendant Johns Hopkins Bayview Medical Center, Inc. acted directly and/or by and/or through its actual and/or apparent agents, servants and/or employees.

8. At all times relevant hereto, the aforementioned Defendant Johns Hopkins Bayview Medical Center, Inc. held itself out to the public as a health care provider who would render reasonably competent health care services to those individuals who came under its professional care.

## **FACTS**

9. Erica Byrom was 15 years old when she became pregnant in early 2014. This was her first pregnancy.

10. While Ms. Byrom was late to prenatal care, her prenatal care was unremarkable. She had an estimated date of confinement (“EDC”) of 1/30/15.

### **October 20, 2014**

11. On October 20, 2014 at approximately 4:45 p.m., Ms. Byrom presented to Southern Maryland Hospital Center where she was admitted to Labor and Delivery. At that time she was 25 weeks gestation.

12. At 4:54 p.m., a fetal assessment noted moderate variability and accelerations were 10 x 10. Ms. Byrom also denied any pain and her membrane was still intact.

13. At 5:30 p.m., a fetal assessment noted a fetal heart rate baseline of 140 bpm, moderate variability, 10 x 10 accelerations, and variable decelerations. The fetal heart rate was noted to be a Category II. It was also noted that Ms. Byrom’s membrane was still intact.

14. At 5:44 p.m., a fetal assessment noted a fetal heart rate baseline of 140 bpm, moderate variability, and 15 x 15 accelerations. Ms. Byrom was repositioned to her left lateral.

15. At 5:46 p.m., the decision was made to discontinue external fetal monitoring.

16. However, at 7:13 p.m., a fetal assessment noted a fetal heart rate baseline of 140 bpm, moderate variability, and 10 x 10 accelerations. It was also noted that Ms. Byrom’s membrane was still intact. It was also noted that Ms. Byrom was receiving an IV and had been positioned left lateral.

17. At 7:30 p.m., a fetal assessment noted a fetal heart rate baseline of 145 bpm, minimal variability, and late decelerations.

18. Shortly thereafter, Ms. Byrom it was decided that Ms. Byrom was to be transferred to Johns Hopkins Bayview Medical Center (hereinafter “Johns Hopkins Bayview”).

19. The reason for transfer was due to the “patient’s pre-eclamptic condition.” It was noted that Ms. Byrom had severe pre-eclampsia, with elevated liver enzymes, and elevated urine protein of 34.9. The Plan/Recommendation also notes that Ms. Byrom “is to be started on MGSO<sub>4</sub> [magnesium sulfate] 4 gms bolus and then 2 gms/hr.”

20. At approximately 8:15 p.m. on October 20, 2014, Ms. Byrom arrived via helicopter at Johns Hopkins Bayview.

21. At 8:31 p.m., a fetal assessment noted a fetal heart rate baseline of 135 bpm, minimal variability, absent accelerations, and absent decelerations. The fetal heart rate was noted to be Category II.

22. At 8:45 p.m., a sonogram noted that the placenta was anterior, AFI [amniotic fluid index] was moderately decreased and noted to be 9 cm, the fetal anatomy was visualized with normal appearance, and pre-premature rupture of membranes was negative.

23. Ms. Byrom was admitted to Johns Hopkins Bayview at 8:50 p.m. It was noted that Ms. Byrom’s chief complaint upon admission was “PEC [preeclampsia] with severe features.”

24. At 8:50 p.m., the history of present illness noted that Ms. Byrom “presented to prenatal visit today and was found to have elevated BPs [blood pressure]...she received BMZ [betamethasone] #1 at 17:50 10/20 and got a 4 g bolus of Mg [magnesium] prior to transport.”

25. In addition, a pelvic exam was also done at 8:50 p.m. that noted 0 cm dilation, 0% effacement, the fetus being in the -5 station, and a bishop score of 0.

26. It was also noted that an ultrasound showed an estimated fetal weight of 644 grams.

27. The Assessment and Plan at this was to continue to monitor and treat preeclampsia; obtain a travel history (Ms. Byrom had recently arrived in the United States from Liberia); and monitor fetal well-being.

28. At 9:01 p.m., a fetal assessment noted a fetal heart rate baseline of 135 bpm, minimal variability, accelerations were present, and variable decelerations. The fetal heart rate was noted to be Category II. No vaginal discharge was also noted.

29. At 9:31 p.m., a fetal assessment noted a fetal heart rate baseline of 135 bpm, moderate variability, accelerations were present, and variable decelerations. The fetal heart rate was noted to be Category II.

30. At 9:54 p.m., a cervical exam noted closed dilation, long effacement and -4 station.

31. At 10:00 p.m., a fetal assessment noted a fetal heart rate baseline of 135 bpm, moderate variability, absent accelerations, and absent decelerations. The fetal heart rate was noted to be Category I.

32. At 10:30 p.m., a fetal assessment noted a fetal heart rate baseline of 135 bpm, minimal variability, absent accelerations, and absent decelerations. The fetal heart rate was noted to be Category II.

33. At 11:00 p.m., a fetal assessment noted a fetal heart rate baseline of 135 bpm, moderate variability, accelerations were present, and variable decelerations. The fetal heart rate was noted to be Category II.

34. At 11:30 p.m., a fetal assessment noted a fetal heart rate baseline of 135 bpm, moderate variability, accelerations were present, and absent decelerations. The fetal heart rate was noted to be Category I.

**October 21, 2014**

35. From approximately 12:00 a.m. to 12:00 p.m. on October 21, 2014, the fetal heart tracing was predominantly noted to be Category I.

36. On October 21, 2104 at approximately 12:30 p.m., an ultrasound was performed. The ultrasound report noted an “estimated fetal weight of 609 grams, a FHR of 125 bpm, anterior placenta, cephalic presentation and 23 weeks 6 days by this ultrasound.”

37. At 12:51 p.m., a fetal assessment noted a fetal heart rate baseline of 135 bpm, minimal variability, absent accelerations, and absent decelerations. The fetal heart rate was noted to be Category II.

38. From 12:51 p.m. to 1:21 p.m., the fetal heart rate tracing was noted as being Category II.

39. At 2:26 p.m., it is noted that “NICU team present to discuss plan of care...NICU speaking with patient regarding lack of fetal growth, and outcome being very poor, named specifically neurological possible defects, CP, paralysis, blindness...gut is not developed due to fetal blood shunting to spare brain and major organs, baby high risk of blindness and the chance of babys [sic] brain being normal is zero.”

40. At approximately 4:30 p.m., Emily Hahn, M.D., a neonatologist, was consulted. Dr. Hahn notes that “although on [sic] ultrasound on 10/6 fetal size was consistent with dates, it now has severe IUGR [intrauterine growth restrictions] with size measuring at 23 5/7 and an estimated fetal weight of 660g...”

41. Dr. Hahn’s consultation report notes “during the consultation we explained that the baby would be born sick with a high likelihood of death or neurodevelopmental disability. He

would require intubation and mechanical ventilation, a prolonged hospital course and was at a high risk due to gestational age and IUGR for NEC [necrotizing enterocolitis] and feeding difficulties...”

42. From approximately 2:50 p.m. until 11:10 p.m., the fetal heart tracing was predominantly noted to be Category I.

43. At approximately 9:00 p.m., Beverly Walker, C.R.N.P. authored a NICU progress note. She noted, “asked to speak with Ms. Byrom and her mother (present in the room) and father (via phone from home.) After a more complete sono today, the infant is noted to be approximately 400 gms with severe IUGR and approximately 23-24 weeks. Initially, the family was told that survival was approximately 65%, but with significant sequelae. Today they were told that survival would be significantly lower than that and the sequelae significantly higher.”

44. At approximately 11:30 p.m., continuous fetal monitoring was suspended.

#### **October 22, 2014**

45. At 12:26 a.m. on October 22, 2014, Linda Szymanski, M.D. noted that “...the patient and her mother have met with NICU Provider several times and understand that the long-term prognosis of a neonate delivered at this gestation with IUGR is poor. We discussed a number of options ranging from cesarean delivery and full resuscitation to pregnancy termination...Earlier today, the patient stated she did not wish to undergo c/s [cesarean section] for fetal indications. This was confirmed this evening...if the patient decides to proceed with IOL [induction of labor] without termination, we discussed that no monitoring would be performed (as no cesarean is desired). It was explained that the fetus could die in utero prior to delivery or the neonate could be delivered with a heart rate.” Dr. Szymanski confirmed that fetal monitoring was discontinued.

**October 23, 2014**

46. At approximately 12:54 p.m., the decision was made to induce labor due to the continued increase of Ms. Byrom's liver function tests ("LFTs").

47. At approximately 4:13 p.m., 50 micrograms (mcg) of Cytotec was administered.

48. At 5:30 p.m. on October 23, 2014, an epidural catheter was placed.

49. At 9:07 p.m. on October 23, 2014, "anesthesia to bedside to start epidural."

50. At 10:06 p.m. on October 23, 2014 a cervical exam revealed that Ms. Byrom was fingertip dilated, 0% effaced, the fetus was in the -5 station and her membranes were intact; a second dose of 50 mcg of Cytotec was also administered.

**October 24, 2014**

51. At approximately 3:26 a.m. on October 24, 2014, a cervical exam revealed that Ms. Byrom was 1 cm dilated, 0% effaced, the fetus was in the 0 station and her membranes were intact. A third dose of 50 mcg of Cytotec was administered.

52. At 8:27 a.m., a cervical exam revealed that Ms. Byrom was 1 cm dilated, 50 % effaced, and the fetus was in the 0 station; a fourth dose of 50 mcg of Cytotec was administered.

53. At approximately 12:29 p.m. Ms. Byrom's membranes spontaneously ruptured. The fluids were noted to be clear.

54. At approximately 1:00 p.m., a fifth dose of 50 mcg of Cytotec was administered.

55. At 2:43 p.m., it was noted that Ms. Byrom "called out for increased pain and wanted reposition in bed. Started to change pads and saw infant crowning. Called OB team and NICU."

56. At 2:44 p.m., Ms. Byrom was completed dilated.



57. At 2:45 p.m., Zubida was born via spontaneous vaginal delivery. At birth, Zubida was limp, apneic, weighed 670 grams and had apgar scores of zero, two, and five at 1, 5, and 10 minutes, respectively.

58. The Delivery Summary noted that Ms. Byrom “received 5 doses of misoprostol for induction and progressed to complete dilation. Felt pressure and RN and MD, CNM were called to room. *Fetal head was partially out.* Remainder of newborn delivered without difficulty.” (emphasis added)

59. Zubida was immediately transferred to the NICU team at 30 seconds of life. At 2 minutes old, Zubida had no heart rate and no respiratory effect.

60. Zubida was successfully intubated by 4 minutes of age without any change in heart rate. Chest compressions began and the heart rate gradually increased to >100 by ~5 minutes of age. FiO2 weaned from 100% to 80% by 10 minutes, then to 20% by 14 minutes of age.

61. Zubida remained at Johns Hopkins Bayview for nearly two months until her discharge on December 26, 2014 when she was transferred to Washington Pediatric Hospital.

62. Today, Zubida suffers from brain damage, global developmental delay and other damage.

63. Had the Defendant Johns Hopkins Bayview Medical Center, Inc. complied with the standard of care, Zubida Byrom would be a normal child today.

**Count I**  
**(Medical Malpractice – Minor’s Claim)**

64. Plaintiffs repeat, re-allege, adopt and incorporate by reference the above paragraphs of this Complaint as if fully set forth herein.

65. In its care and treatment of Erica Byrom and Zubida Byrom, Defendant Johns Hopkins Bayview Medical Center, Inc., acting directly and/or by and/or through its actual and/or apparent agents, servants, and/or employees, owed to Plaintiffs the duty to exercise that degree of care and skill which a reasonably competent hospital, obstetrician, and/or similar health care provider would have exercised under the same or similar circumstances.

66. Defendant Johns Hopkins Bayview Medical Center, Inc., acting directly and/or by and/or through its actual and/or apparent agents, servants, and/or employees, breached the aforesaid duty of care to Erica Byrom and Zubida Byrom, and were negligent by:

- a. Failing to take appropriate precautions in monitoring and treating Erica Byrom and Zubida Byrom's condition;
- b. Failing to obtain appropriate consultations and/or appropriately utilize the information available to them;
- c. Failing to react to the positive history, symptoms, signs, physical findings, and other data which were illustrative of Erica Byrom and Zubida Byrom's condition;
- d. Failing to appropriately treat Erica Byrom and Zubida Byrom;
- e. Failing to maintain adequate and/or appropriate written policies, procedures and/or protocols;
- f. Failing to appropriately follow written policies, procedures and/or protocols;
- g. Failing to maintain continuous fetal monitoring;
- h. Failing to utilize proper techniques during the delivery of Zubida Byrom via vaginal delivery;

- i. Failing to appropriately notify Erica Byrom of the estimated fetal weight of Zubia Byrom, and the likely outcomes based on Zubida Byrom's estimated fetal weight;
- j. Negligently persuading Erica Byrom to approve a plan of care that put Zubida Byrom at risk for brain damage;
- k. Failing to maintain continuous fetal monitoring during a high risk induction of labor;
- l. Negligently inducing labor with excessive amounts of Cytotec

66. As a direct and proximate result of the above-mentioned deviations from the applicable standards of care by the Defendant Johns Hopkins Bayview Medical Center, Inc., Zubida Byrom suffered and/or will suffer the following permanent injuries, among others:

- a. Periventricular leukomalacia;
- b. Microcephaly;
- c. Brain damage;
- d. Global volume loss of the brain;
- e. Metabolic acidosis;
- f. Developmental delay;
- g. Cognitive and mental impairment;
- h. Neurological disabilities;
- i. Seizures;
- j. Physical impairment;
- k. Significant conscious pain and suffering;
- l. Emotional distress;

- m. She is and will be permanently dependent upon others for her care;
- n. She has and will continue to undergo serious and painful medical procedures;
- o. She has and will continue to incur significant medical and other care expenses for which he and his parents are incapable of paying;
- p. Her earning capacity has been severely diminished; and
- q. Other injuries and damages.

WHEREFORE, Plaintiffs, Zubida Byrom, a minor by and through her Mother and Next friend, Erica Byrom, and Erica Byrom, Individually, bring this action against the Defendant Johns Hopkins Bayview Medical Center, Inc. for all injuries and damages suffered and sustained by the Plaintiffs, and for any other damages to which the Plaintiffs are entitled, and such other and further relief as may be deemed appropriate.

**Count II**  
**(Medical Malpractice – Parental Claim)**

67. Plaintiffs, repeat, re-allege, adopt, and incorporate by reference the above paragraphs of this Statement of Claim as if fully set forth herein.

68. As a further direct and proximate result of the above-mentioned deviations from the applicable standard of care by the Defendant Johns Hopkins Bayview Medical Center, Inc., Erica Byrom, has suffered and/or will suffer the following injuries, among others:

- a. She has incurred and will continue to incur substantial expenses for medical treatment and other care of Zubida Byrom;
- b. She has suffered and will continue to suffer the loss of services, companionship, labor, assistance, etc. from her child Zubida Byrom; and

- c. She has suffered and will continue to suffer great emotional anguish and pain and suffering as a consequence of the Defendant Johns Hopkins Bayview Medical Center, Inc.'s negligence described above.

WHEREFORE, Plaintiffs, Zubida Byrom, a minor by and through her Mother and Next friend, Erica Byrom, and Erica Byrom, Individually, bring this action against the Defendant Johns Hopkins Bayview Medical Center, Inc. for all injuries and damages suffered and sustained by the Plaintiffs, and such other and further relief as may be deemed appropriate.

**Count III**  
**(Informed Consent)**

69. Plaintiffs repeat, re-allege, adopt, and incorporate by reference the above paragraphs of this Statement of Claim as if fully set forth herein.

70. Defendant Johns Hopkins Bayview Medical Center, Inc., acting directly and/or by and/or through its actual and/or apparent agents, servants, and/or employees, owed the Plaintiffs the duty to adequately and appropriately notify Erica Byrom of the various alternatives and material risks involved in the various modalities of treatment for the delivery of her daughter, Zubida Byrom, given the ultrasound findings and other data available to the Defendant Johns Hopkins Bayview Medical Center, Inc.

71. Defendant Johns Hopkins Bayview Medical Center, Inc., acting directly and/or by and/or through its actual and/or apparent agents, servants, and/or employees, owed the Plaintiffs the duty to adequately and appropriately notify Erica Byrom of the various alternatives to delivery via cesarean section if continuous fetal monitoring was maintained, given the ultrasound findings and other data available to the Defendant Johns Hopkins Bayview Medical Center, Inc.

72. Defendant Johns Hopkins Bayview Medical Center, Inc., acting by directly and/or by and/or through its actual and/or apparent agents, servants, and/or employees was negligent in the failure to adequately and appropriately notify Erica Byrom of the correct estimated fetal weight of Zubia Byrom, and the likely outcomes based on Zubida Byrom's correct estimated fetal weight. This failure induced Erica Byrom to make decisions for her and Zubida Byrom's plans of care based on faulty and/or incorrect information, including, but not limited to Erica Byrom's decision not to undergo a cesarean section for indications of fetal distress.

73. Defendant Johns Hopkins Bayview Medical Center, Inc., acting by directly and/or by and/or through its actual and/or apparent agents, servants, and/or employees was negligent in the failure to adequately and appropriately obtain the informed consent from Ms. Byrom and were otherwise negligent.

74. Had Defendant Johns Hopkins Bayview Medical Center, Inc. appropriately counseled and informed Ms. Byrom of the material risks, benefits and alternatives of attempting a vaginal birth in the absence of fetal monitoring extremely remote from vaginal delivery, Ms. Byrom, like any reasonable person, would have elected to continue fetal monitoring and/or elected to undergo a cesarean section and/or elected to pursue treatment options for fetal distress other than cesarean section, long before she gave birth vaginally at 2:44 p.m. on October 24, 2014.

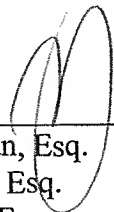
75. As a direct and proximate result of Defendant Johns Hopkins Bayview Medical Center, Inc.'s failure to properly obtain informed consent, by and through its actual and/or apparent agents, servants and/or employees, the Plaintiffs have suffered the injuries described in Counts I and II above.

WHEREFORE, Plaintiffs, Zubida Byrom, a minor by and through her Mother and Next friend, Erica Byrom, and Erica Byrom, Individually, bring this action against Defendant Johns

Hopkins Bayview Medical Center, Inc., for all injuries and damages suffered and sustained by the Plaintiffs, and for any other damages to which the Plaintiffs are entitled, and such other and further relief as may be deemed appropriate.

Respectfully submitted,

WAIS, VOGELSTEIN, FORMAN & OFFUTT, LLC



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**DEMAND FOR JURY TRIAL**

The Plaintiffs, by and through their undersigned attorneys, hereby demand a trial by jury on all issues raised herein.

Respectfully submitted,

WAIS, VOGELSTEIN, FORMAN & OFFUTT, LLC



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